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No. .....

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Supreme Court of the United States

OCTOBER TERM, 1982

RETAIL CLERKS UNION LOCAL 648,
RETAIL CLERKS UNION LOCAL 870, AFL-CIO
and
U.F.C.W. LOCAL 1228

Petitioners,

vs.

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION
and
EXXON CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, CHEVRON USA, INC., ATLANTIC RICHFIELD COMPANY, SHELL OIL COMPANY, TEXACO, INC., GULF OIL COMPANY, MOBIL CORPORATION, MOBIL OIL CORPORATION, CONOCO, INC., and UNION OIL COMPANY OF CALIFORNIA,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

Can the Judicial Panel on Multidistrict Litigation properly transfer a removed action from one District Court to another District Court where it appears on the face of the removed action that federal jurisdiction is lacking and where a motion to remand is pending?

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In The

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October Term, 1982

Retail Clerks Union Local 648,
Retail Clerks Union Local 870, AFL-CIO
and
U.F.C.W. Local 1228

Petitioners,

vs.

Judicial Panel On Multidistrict Litigation
and
Exxon Corporation, Standard Oil Company Of California,
Chevron USA, Inc., Atlantic Richfield Company,
Shell Oil Company, Texaco, Inc., Gulf Oil Company,
Mobil Corporation, Mobil Oil Corporation, Conoco, Inc.,
and Union Oil Company Of California,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

Retail Clerks Union Local 648, Retail Clerks Union Local 870, AFL-CIO, and U.F.C.W. Local 1288, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Ninth Circuit in this case.

REVIEW ON CERTIORARI NECESSARY

Petitioners respectfully suggest that this court should review the decision of the Court of Appeals for the Ninth Circuit because:

1. It conflicts with the Sixth Circuit's opinion in *BankOhio Corp.* v. *Fox*, 516 F.2d 29 (6th Cir. 1975); and

2. This opinion decides an important question of federal jurisdictional law which has not been, but should be, settled by this Court.

OPINIONS BELOW

The order of the Judicial Panel on Multidistrict Litigation transferring this state-court, indirect-purchaser, antitrust action from the United States District Court for the Northern District of California (to which Court it had been improperly removed by the defendants) to the United States District Court for the Central District of California is attached hereto as Exhibit 1.

The order of the United States Court of Appeals for the Ninth Circuit denying Petitioners' Writ of Mandamus is attached hereto as Exhibit 2.

SUPREME COURT JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(a).

STATEMENT OF THE CASE

What started out as a simple state-court, antitrust case in the San Francisco Superior Court has been transformed into "multidistrict litigation" in which five separate federal courts have now become involved. Thousands of dollars and hundreds of hours have been wasted since this case was improperly removed to federal court. Now is the time to put a halt to these federal proceedings before more time, more money and more energy are wasted.

Petitioners, Retail Clerks Union Local 648, Retail Clerks Union Local 870, AFL-CIO, and U.F.C.W. Local 1288, filed an indirect-purchaser, Cartwright Act suit in the San Francisco Superior Court on January 14, 1982. That state-court action was removed to the San Francisco Federal District Court on January 27, 1982.

Two days later, Petitioners moved that District Court for an order remanding their case back to the San Francisco Superior Court.

Prior to the hearing on Petitioners' remand Motion, defendants moved the Judicial Panel on Multidistrict Litigation ("Panel") to order the transfer of this indirect-purchaser, state-court, antitrust case to the Los Angeles Federal District Court, there to be consolidated with certain MDL-proceedings that are almost ten years old.

The San Francisco Federal District Court refused to proceed with Petitioners' motion to remand until the Panel ruled on defendants' transfer motion. Petitioners sought Mandamus relief in the United States Court of Appeals for the Ninth Circuit requiring the District Court to proceed with the remand hearing; that relief was denied.

On May 13, 1982, the Panel transferred this action to the Los Angeles Federal District Court and consolidated it with the *Petroleum Products* cases. Petitioners once again sought Mandamus review in the Ninth Circuit. On July 7, 1982, the Ninth Circuit denied the requested relief, finding that petitioners' had ". . . alternative remedies available . . .".

Therefore a case over which the San Francisco Federal District Court had no jurisdiction was transferred by the Panel — which likewise was without jurisdiction — to the Federal District Court in Los Angeles, which also is without jurisdiction to hear Petitioners' Complaint. Thus, Petitioners are faced with the prospect of having to spend even more money and waste more time in having yet a second Federal District

Court rule on the remand of their state-court action, not to mention that they are now forced to travel some 400 miles to attend the hearing.

The effect of this Panel decision is that even where federal jurisdiction appears lacking on the face of a state-court complaint, that case can be removed to a Federal District Court with impunity and then transferred anywhere in the United States by the Panel if it even remotely resembles any MDL-litigation then in progress.

The precedential ramifications of the Panel's Transfer Order are staggering. The federal system will be flooded with state-court antitrust cases, not to mention other state-court actions, such as securities act cases. Litigants will be required to pack-up their bags and travel from one State to another at the whim of the Panel. Motions to remand that should be decided by the Federal District Court in the District from which the state-court proceeding was removed, will be decided by MDL Transfer Courts, sometimes thousands of miles from the state in which the action was originally initiated. Numerous federal judges and other court personnel will have to be involved with such cases — at least the Transferor Court, the Panel and the Transferee Court — all at a substantial cost of the taxpayers.

Petitioners respectfully suggest that this Court should put a halt to this unwarranted usurpation of state-court litigation by the lower Federal Courts.

REASONS FOR GRANTING REVIEW

A. Conflict Among Circuit Courts

The Ninth Circuit's decision below is in direct conflict with the Sixth Circuit's opinion in *BankOhio Corp* v. *Fox*, 516 F.2d 29 (6th Cir. 1975).

The *BankOhio* case involved a review by the Sixth Circuit on a mandamus petition of a District Court's refusal to dismiss a state-court action improperly removed to that federal court. In *BankOhio*, the plaintiffs had filed a state-court action against a defendant accounting firm, claiming fraud and negligence in the preparation of financial statements for the Equity Funding Corporation of America. Defendants removed that state-court suit to the Federal District Court in the District in which the state court was sitting. Thereafter, plaintiff's motion to remand was denied by that District Court, as was plaintiff's motion to dismiss for

lack of subject matter jurisdiction. Defendants then moved the Panel for an order transferring *BankOhio* to the Central District of California, for coordination with other *Equity Funding* cases.

Plaintiffs' sought a Writ of Mandamus requiring the District Court to dismiss *BankOhio* for lack of jurisdiction. Shortly thereafter, the Panel entered a Transfer Order, sending *BankOhio* from the Western District of Michigan to the Central District of California.[1]

In answering defendants' argument that 28 U.S.C. 1407 required removal and transfer of this state-court action, rather than remand or dismissal, the Sixth Circuit held:

> Neither does the statute on multidistrict litigation, 28 U.S.C. Sec. 1407, compel a different result. No matter how desirable respondents feel it may be to consolidate in California all litigation in any way related to Equity Funding, there is nothing in the applicable statute to provide an exception to the rules normally governing removal of cases from state courts. Such a transfer cannot be made unless the district court properly has jurisdiction of the subject matter of the case. Here there is no such jurisdiction. 516 F.2d, p. 32.

The Ninth Circuit's refusal to issue a writ of mandamus requiring the Panel to vacate its Transfer Order so that the Federal District Court for the Northern District of California could rule on Petitioners' remand motion is in clear conflict with the Sixth Circuit's *BankOhio* decision holding that a Panel Transfer Order ". . . cannot be made unless the district court properly has jurisdiction of the subject matter of the case." 516 F.2d, p. 32.

B. This Petition Involves an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by this Court

Since this Court's *Illinois Brick*[2] opinion, limiting Clayton-4, treble-damage suits to direct purchasers only, state-court antitrust actions have grown apace. See, *Esprit de Corp.* v. *Alton Box Board Co., et al.*, Civil No. 750-975 (S.F. Super. Ct. 1979); *Greenberg* v. *Leviton Manufactur-*

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[1] The Panel stayed its Transfer Order until after the mandamus petition was heard by the Sixth Circuit.

[2] *Illinois Brick Company* v. *Illinois*, 431 U.S. 702 (1977).

ing Co., et al., Civil No. 759-734 (S.F. Super. Ct. 1979); *Busy Boy Markets Inc., et al.* v. *Roblin Industries, Inc., et al.*, Civil No. 781-380 (S.F. Super. Ct. 1981); *Sherer* v. *Amtel, Inc., et al.*, Civil NO. 786-832, (S.F. Super. Ct. 1982); *Retail Clerks Union, Local 1288, et al.* v. *Allied Finance Adjusters Conference, et al.*, Civil No. 777-670 (S.F. Super Ct. 1981); *Villmar Dental Studios, Inc., et al.* v. *Union Carbide Corporation, et al.*, Civil No. 776-005 (S.F. Super. Ct. 1981); *Pate* v. *Boise Cascade Corp., et al.*, Civil No. 765-742 (S.F. Super. Ct. 1980); *Goldberg* v. *CPC Industrial, Inc. et al.*, Civil No. 765-217 (S.F. Super. Ct. 1981).[3]

In addition to California, at least six other states have enacted anti-*Illinois Brick* damage statutes. See, for example, Alabama Code, Section 6-5-60; Hawaii Revised Statutes, Section 480-14(c); Illinois Revised Statutes, Chapter 31, Section 60-7(2); Mississippi Code, Section 75-21-9; New Mexico Statutes, Section 57-1-3(A); and Wisconsin Statutes, Section 133.18(1).[4]

Petitioners respectfully suggest that unless this Court rules on the question of whether the Panel can transfer removed, state-court, antitrust actions, which on their face show a lack of federal jurisdiction, the federal judicial system will be flooded with removed, state-court, antitrust actions, which will then be subject to transfer by the Panel throughout the United States.

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[3] Petitioners do not know how many other Cartwright Act, class actions are pending in other California Courts.

[4] Petitioners do not know how many indirect-purchaser antitrust actions are pending in these six states.

CONCLUSION

This action was brought by *indirect purchasers* alleging violations of the California Cartwright Act. The unambiguous mandate of this Court's *Illinois Brick* ruling is that indirect-purchaser actions cannot be brought in federal courts. That being the case, the Panel's Transfer Order was clearly erroneous, and the Ninth Circuit's failure to vacate that Transfer Order was likewise erroneous, and should be corrected by this Court.

DATED: July 26, 1982

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